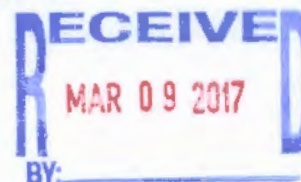


CREW | citizens for responsibility and ethics in washington

March 9, 2016



By Facsimile: 202-566-0870

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and Environmental Protection Agency ("EPA") regulations.

Specifically, CREW seeks:

- 1) Records of all communications between December 21, 2016 and the present between EPA employees and Carl Icahn, and/or anyone representing him.
- 2) Records of all communications between January 20, 2017 and the present between EPA employees and employees of the Executive Office of the President and/or the Trump transition team related to the Renewable Fuel Standard Program.
- 3) Records of all communications between January 20, 2017 and the present between EPA employees and employees of the Executive Office of the President and/or the Trump transition team related to or mentioning Carl Icahn.
- 4) Copies of any memorandum or proposals submitted to the EPA between December 21, 2016 and the present by outside stakeholders regarding potential changes to the Renewable Fuel Standard Program.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). In the event some portions of the requested records are

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properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and EPA regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On December 21, 2017, then-President-elect Donald Trump announced that billionaire investor Carl Icahn had "agreed to serve as a special advisor to the President on issues relating to regulatory reform."¹ The press release issued by the Trump-Pence Transition Team also asserted, however, Mr. Icahn would "be advising the President in his individual capacity and will not be serving as a federal employee or a Special Government Employee and will not have any specific duties."

Mr. Icahn owns a majority stake in CVR Energy Inc., an oil refiner, and advocates \ for changing the point of obligation for complying with renewable fuel standards from refiners to fuel blenders.² On February 27, 2017, *Bloomberg* reported that Icahn, along with the Renewable Fuels Association and representatives of Valero Energy Corp., had "provided a deal to the Trump administration for revamping the Renewable Fuel Standard that would give both parties a long-sought change to the regulation." Mr. Icahn and his partners reportedly "presented the White House with a memorandum containing draft language it could use to direct the [EPA] to make the adjustments."³ The White House subsequently said "there is no ethanol executive order in the works."⁴

Despite the Trump White House's claim that Mr. Icahn is "simply a private citizen whose opinion the president respects and whom the president speaks with from time to time" and "does not have a position with the administration nor a policymaking role," Mr. Icahn may have

¹ See <https://greatagain.gov/icahn-advisor-regs-cd3c949af118#.lojaltcxn>.

² Jennifer A. Dlouhy and Mario Parker, *Trump Said to Consider Biofuel Plan Between Icahn, Ethanol Group*, *Bloomberg*, Feb. 27, 2017 (available at <https://www.bloomberg.com/news/articles/2017-02-28/trump-said-to-consider-biofuel-plan-between-icahn-ethanol-group>).

³ *Id.*

⁴ Chris Prentice, *White House Denies Trump Order on Biofuels Program Pending, Markets Roiled*, *Reuters*, Feb. 28, 2017 (available at <http://www.reuters.com/article/us-usa-trump-renewables-idUSKBN1671PD>).

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presented himself as a representative of the Trump administration in his negotiations with his industry partners.⁵ Bob Dinneen, the head of the Renewable Fuels Association, told reporters that "an official with the Trump administration" contacted his organization, "informing us that a pending executive order would change the point of obligation."⁶ Mr. Dinneen said his group was "told the executive order was not negotiable."⁷ Dinneen later told *Reuters* that Icahn had contacted his group and told them President Trump was about to issue an executive order to change the point of obligation.⁸ "Icahn indicated that he had spoken to the president about this issue and the president is supportive" of the proposed changes, Mr. Dinneen said.⁹ Mr. Icahn, however, denied to *Reuters* that he had told the ethanol group an executive order was pending. "I told Mr. Dinneen that I didn't know what the president would do, but believed he would be supportive and it would be ideal if we could get this fixed with an executive order," Icahn said.¹⁰

The requested records would shed light on whether Mr. Icahn has been involved in policymaking, acted as a de facto government employee, or has used his status as a "special adviser" to the president to seek to influence policy that would benefit him financially. The records would also increase public knowledge about the Trump administration's policy preferences regarding the Renewable Fuel Standard.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org, and through www.scribd.com. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

⁵ Jennifer A. Dlouhy, Ari Natter, and Bill Allison, "Purest Definition of a Conflict": Icahn's \$126 Million Gain on Biofuel Deal Draws Criticism, *Bloomberg*, Feb. 28, 2017 (available at <https://www.bloomberg.com/news/articles/2017-02-28/icahn-a-126-million-gain-on-biofuel-deal-prompts-criticism>).

⁶ David Dayen, *Crony Capitalism at Work? Trump Adviser Carl Icahn Strong-Arms Ethanol Lobby to Save His Company Millions*, *The Intercept*, March 2, 2017 (available at <https://theintercept.com/2017/03/02/crony-capitalism-at-work-trump-adviser-carl-icahn-strong-arms-ethanol-lobby-to-save-his-company-millions/>).

⁷ *Id.*

⁸ Chris Prentice and Jennifer Abian, *U.S. Ethanol Group Clashes with Icahn over Details of Biofuel Negotiation*, *Reuters*, March 3, 2017 (available at <http://www.reuters.com/article/us-usa-biofuels-icahn-idUSKBN16A2IS>).

⁹ *Id.*

¹⁰ *Id.*

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CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts all documents it receives under the FOIA at www.scribd.com, and those documents have been visited hundreds of thousands of times.

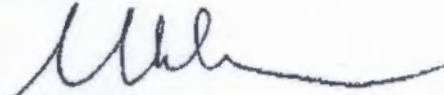
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. CREW also welcomes the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the EPA to process it within the FOIA's deadlines. In addition, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or at Anne Weismann, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., 6th Floor, Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel